



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/21/2647

Re: Property at 49/6 West Mill Road, Edinburgh, EH13 0NZ (“the Property”)

Parties:

Mr Charles Fairfield, Mrs Susan Fairfield, C/o DJ Alexander Lettings Limited, 1 Wemyss Place, Edinburgh, EH3 6DH (“the Applicants”)

Mr Murray Crowson, 49/6 West Mill Road, Edinburgh, EH13 0NZ (“the Respondent”)

Tribunal Members:

Richard Mill (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Eviction Order be granted against the respondent

Introduction

This is an eviction application under Rule 109 of the First-tier Tribunal Housing and Property Chamber Rules of Procedure 2017 and Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016.

Service of the application and intimation of the Case Management Discussion (CMD) was effected upon the respondent by Sheriff Officers on 20 December 2021.

The CMD took place by teleconference on 21 January 2022 at 10.00 am.

The applicants were represented by Ms Dayna Greeney of DJ Alexander Letting Agents. The respondent failed to participate in the teleconference hearing. There is no known reason for his failure to participate.

Findings and Reasons

The Tribunal found the unchallenged documentary evidence credible and reliable and attached weight to it.

The property is 49/6 West Mill Road, Edinburgh EH13 0NZ.

The applicants are Mr Charles Fairfield and Mrs Susan Fairfield. They are the heritable proprietors of the property and are registered landlords. The respondent is Mr Murray Crowson. He is the tenant of the let property.

The parties entered into a private residential tenancy on 3 June 2020. The rent was stipulated at a rate of £1,100 per month.

The current eviction proceedings are based upon arrears of rent and the ground relied upon is ground 12, contained within Part 1, Schedule 3 to the 2016 Act, namely that the respondent is in rent arrears over three consecutive months.

Ground 12 as originally drafted was a mandatory ground for eviction. Since the coming into force of the Coronavirus (Scotland) Act 2020, all evictions are discretionary. Additionally the Notice periods have been extended by virtue of the 2020 Act. The relevant Notice period under ground 12 was previously one of 28 days and is now one of 6 months.

The Notice to Leave upon which the eviction application proceeds is dated 20 April 2021. This gives Notice to the respondent that an application would not be submitted to the Tribunal for an Eviction Order before 23 October 2021. The Notice to Leave is valid and the dates are calculated in accordance with Section 62 of the Act. This requires 48 hours to be added on to allow for service and an additional period of one day after expiry of the Notice period. The assumed 2 days for service would be a deemed service of 22 April 2021. The 6 month period would run from then and end on 22 October 2021. The additional one day required under Section 62 of the Act means that the Notice to Leave should specify 23 October 2021 which it does.

Service of the Notice to Leave upon the respondent in fact took place by email sent on 20 April 2021 so the respondent had an additional period of notice beyond that which is required under Act.

The respondent has fallen into significant arrears of rent. The application is accompanied by a detailed rent statement which discloses that at the time of application the level of arrears had risen to £14,204.11. The rent was apportioned for the final month up to the date of application which explains the odd total. As the date of the hearing the rent arrears had increased above £16,000. In terms of a former application to the Tribunal a payment order dated 29 June 2021 in the sum of £9,200 was made against the respondent.

The Tribunal was satisfied that more than three consecutive months of rent remains unpaid by the respondent. This establishes ground 12. The Tribunal proceeded to consider the issue of reasonableness.

The Tribunal had regard to the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 which came into force on 30 September 2020 which apply to evictions applications based upon rent arrears. The Tribunal was satisfied that full advice and assistance has been provided to the respondent by the applicants' letting agent regarding his rights and the support available to him.

The Tribunal took account of the fact that the respondent is evidenced to have received a payment of £5,600 under the Scottish Governments Tenant Hardship Loan Scheme. This was allocated to him in March 2021. None of these funds were allocated to the outstanding rent and once received by his bank account or effectively 'swallowed' by his unauthorised overdraft. The applicants' letting agent assisted the respondent in securing this loan.

A relevant section 11 Notice under the Homelessness etc (Scotland) Act 2003 has been issued to the local authority. The Tribunal found that it was more likely than not that the respondent will be offered alternative suitable housing in the event of an eviction order being made.

The respondent is well aware of the eviction application and has chosen not to defend it. He remains in communication with the applicants' letting agent. Little is known about his personal circumstances, however he is known to be self-employed and he has no known vulnerabilities nor dependents.

Weighing up the respective circumstances of the parties the Tribunal concluded that it was reasonable to grant the Eviction Order. It is unacceptable to expect the applicants to continue to maintain the property for the respondent in the absence of receiving any rental payments.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Richard Mill

21 January 2022

Legal Member/Chair

Date